

The Honorable Marsha J. Pechman

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DIANNE KELLEY,

Plaintiff,

v.

MICROSOFT CORPORATION, a Washington
corporation,

Defendant.

No. C 07-475 MJP

DECLARATION OF KHIOTA
THERRIEN IN SUPPORT OF
MICROSOFT'S MOTION TO
DISMISS PLAINTIFF'S FIRST
AMENDED COMPLAINT

Note on Motion Calendar:
June 22, 2007

Oral Argument Requested

Khiota Therrien declares as follows:

1. ***Identity of Declarant.*** I am an Online Product Manager for Microsoft Corporation in Redmond, Washington. I have held this position since 2002, and since July of 2006 have focused on Windows Vista Web activities. In this position, I work with Windows marketing professionals to manage Web projects and oversee the official Microsoft Web presence for Windows Vista. As part of my job responsibilities, I have access to those archived versions of the Windows Vista Web sites that are stored on Microsoft's servers, and I routinely access those archived versions for a variety of business-related purposes. I make this declaration based upon my personal knowledge acquired in this position.

THERRIEN DECLARATION IN SUPPORT OF MOTION TO
DISMISS (NO. C07-475 MJP) — 1

SEA 2021420v3 0025936-000689

Davis Wright Tremaine LLP
LAW OFFICES

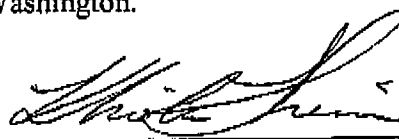
2600 Century Square · 1501 Fourth Avenue
Seattle, Washington 98101-1688
(206) 622-3150 · Fax: (206) 628-7699

1 2. **Nick White Web log.** I have read Paragraph 4.6 of the Plaintiff's First
2 Amended Complaint, which refers to an October 2006 Web log ("blog") posting by an
3 individual identified as Nick White, in which he is quoted as using the words "designed to
4 deliver the core Vista experience." A simple Internet search discloses that this refers to the
5 posting attached hereto as Exhibit A, which appeared on a Microsoft Web site on or about
6 October 24, 2006, and which is still accessible at the following address:
7 [http://windowsvistablog.com/blogs/windowsvista/archive/2006/10/24/buy-a-pc-now-upgrade-](http://windowsvistablog.com/blogs/windowsvista/archive/2006/10/24/buy-a-pc-now-upgrade-to-windows-vista-later.aspx)
8 [to-windows-vista-later.aspx](http://windowsvistablog.com/blogs/windowsvista/archive/2006/10/24/buy-a-pc-now-upgrade-to-windows-vista-later.aspx).

9 3. **Link from Blog.** The posting described in the preceding paragraph contains a
10 link in the second paragraph under the heading "Windows Vista," in the sentence that reads:
11 "Go here for more information about Windows Vista Capable and Premium Ready PCs." If
12 the reader clicks on the word "here," it takes the reader to the following address:
13 <http://www.microsoft.com/windows/products/windowsvista/buyorupgrade/capable.mspx>.
14 The content currently accessible at that address was updated in 2007, long after the posting
15 described in the previous paragraph. An archived version of this Web page, however,
16 presently resides on Microsoft's servers and is attached as Exhibit B. If a reader had clicked
17 on the word "here" in October 2006 in the sentence quoted above, Exhibit B is the page that
18 would have appeared.

19 I declare under penalty of perjury that the foregoing is true and correct.

20 Executed on May 24, 2007, in Redmond, Washington.

21 

22 Khiota Therrien
23

CERTIFICATE OF SERVICE

I hereby certify that on May 25, 2007, I electronically filed the foregoing Declaration of Khiota Therrien in Support of Microsoft's Motion to Dismiss Plaintiff's First Amended Complaint with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Jeffrey I. Tilden:	<u>jtilden@gmtlaw.com</u>
Jeffrey M. Thomas:	<u>jthomas@gmtlaw.com</u>
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DATED this 25th day of May, 2007.

Davis Wright Tremaine LLP
Attorneys for Defendant

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EXHIBIT A

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Windows Vista News

Subscribe

Buy a PC Now, Upgrade to Windows Vista After Launch

★★★★★



Posted by Nick White on Tuesday, October 24, 2006 3:23 PM

49
Comments

Tags: Windows Vista, Announcement, Express Upgrade, Technology Guarantee

Today we're announcing something you've all been waiting for -- information on the upgrade process for those of you who are planning to buy a new PC in the coming months but prior to the Windows Vista launch. Well, now you can have both (and Office to boot)!

Here's the scoop:

PCs loaded with Windows XP or pre-installed with 2003 Microsoft Office software can be upgraded via the Express Upgrade to Windows Vista and Microsoft Office Technology Guarantee program. Express Upgrade will be available to consumers and small businesses from 26 Oct 2006 through 15 March 2007.

Check out the Express Upgrade site for details.

Windows Vista

Windows Vista upgrades may be offered for free or at a discounted price (shipping and handling charges may also apply), so it pays to check with the particular PC manufacturer for details specific to their offer.

Consider looking for "Windows Vista Capable" PCs designated as "Premium Ready," as these PCs are designed to deliver the core Windows Vista experience. PCs carrying only the "Windows Vista Capable" logo may be eligible for the program, but the offer may vary from manufacturer to manufacturer. Go [here](#) for more information about Windows Vista Capable and Premium Ready PCs.

If you purchase a PC running Windows XP this holiday, you should remember to take into account the upgrade path of the SKU you purchase. In the US, the upgrade path looks like this (but will vary by region):

Windows XP Media Center Edition 2005 --> Windows Vista Home Premium (nominal fee)

Exhibit A
Page 1 of 2

Windows XP Professional --> Windows Vista Business (nominal fee)

Windows XP Tablet PC Edition --> Windows Vista Business (nominal fee)

Windows XP Professional x64 Edition --> Windows Vista Business 64 (nominal fee)

Meanwhile, upgrades of this type:

Windows XP Home Edition --> Windows Vista Home Basic

Windows XP Home Edition --> Windows Vista Home Premium

... are both available at 50% discount from the boxed product upgrade price, plus shipping and handling.

Office

You can upgrade to the comparable edition of 2007 Microsoft Office when you purchase a PC pre-installed with qualifying Microsoft Office 2003 software. More details are at the Express Upgrade site.

Boxed Product (FPP)

Similar programs are available region-by-region for upgrading both Microsoft Office 2003 and Windows XP FPP to Windows Vista and 2007 Microsoft Office; your local retailer will have the particulars.

So with this program, you can buy a PC with Windows XP now and upgrade it to Windows Vista once we've launched commercially. How's that for making your purchasing decision a little easier?

OCT 24 Posted by Anonymous



I wasn't expecting an upgrade program for Office 2003 aswell. Good move :-)

OCT 24 Posted by Anonymous



I have Windows XP Professional, this means I can't buy a Windows Vista Home Premium upgrade? I HAVE to use Windows Vista Business in order to but just the upgrade?

OCT 24 Posted by Anonymous



I have Windows XP Professional, this means I can't buy a Windows Vista Home Premium upgrade? I HAVE to use Windows Vista Business in order to buy just the upgrade?

OCT 24 Posted by Anonymous



I just re-read the post. This is just for people who bought XP between those dates.

EXHIBIT B



Windows Vista Home

Get Ready

Windows Vista Capable and Premium Ready PCs

Quick Links

Search Microsoft.com for:



Windows Vista Capable and Premium Ready PCs

Choose a Windows Vista Capable or Premium Ready PC for the Windows Vista edition that's right for you.

Are you looking to buy a Windows XP-based computer today but want to make sure that it can run Windows Vista? There's no need to wait. When you buy a new PC that carries the Windows Vista Capable or Premium Ready PC designation, you'll be able to upgrade to one of the editions of Windows Vista while taking advantage of all the opportunities offered by Windows XP today.

What is a Windows Vista Capable PC?

A new PC that carries the Windows Vista Capable PC logo can run Windows Vista. All editions of Windows Vista will deliver core experiences such as innovations in organizing and finding information, security, and reliability. All Windows Vista Capable PCs will run these core experiences at a minimum. Some features available in the premium editions of Windows Vista?like the new Windows Aero user experience?may require advanced or additional hardware.

A Windows Vista Capable PC includes at least:

- A modern processor (at least 800MHz¹).
- 512 MB of system memory.
- A graphics processor that is DirectX 9 capable.

Windows Vista Premium Ready PCs

To get an even better Windows Vista experience, including the Windows Aero user experience, ask for a Windows Vista Capable PC that is designated Premium Ready, or choose a PC that meets or exceeds the Premium Ready requirements described below. Features available in specific premium editions of Windows Vista, such as the ability to watch and record live TV, may require additional hardware.

A Windows Vista Premium Ready PC includes at least:

- 1 GHz 32-bit (x86) or 64-bit (x64) processor¹.
- 1 GB of system memory.
- Support for DirectX 9 graphics with a WDDM driver, 128 MB of graphics memory (minimum)², Pixel Shader 2.0 and

Information for:

Small Businesses

Businesses

Developers

IT Professionals

Media Relations

Partners

- 32 bits per pixel.
- 40 GB of hard drive capacity with 15 GB free space.
- DVD-ROM Drive³.
- Audio output capability.
- Internet access capability.

Read all of the Windows Vista Capable footnotes.

Review the Windows Vista minimum supported system requirements.

Windows Marketplace has a selection of Windows Vista Capable and Premium Ready PCs that are available today.

Windows Vista enterprise hardware planning guidance is available on TechNet.

Can the Windows Vista experience vary on different PCs?

Yes, Windows Vista is the first Windows operating system with a user experience that adapts to take advantage of the capabilities of the hardware on which it is installed.

All Windows Vista Capable PCs will be able to run at least the core experiences of Windows Vista.

All Windows Vista Premium Ready PCs can deliver even better Windows Vista experiences, including the new Windows Aero user experience.

Does buying a Windows Vista Capable PC mean that I will receive a free upgrade to Windows Vista?

No. A PC that is Windows Vista Capable or Premium Ready means that the PC is ready for an upgrade from Windows XP. You would still need to purchase the edition of Windows Vista that you want to install on your Windows Vista Capable or Premium Ready PC.

Windows Vista Capable and Premium Ready PCs
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